

Senate Bill No. 215

CHAPTER 32

An act to amend Section 6263 of, to add Sections 6909 and 6910 to, and to repeal Sections 6261 and 6262 of, the Revenue and Taxation Code, relating to vehicles, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 8, 2000. Filed with
Secretary of State June 8, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 215, Karnette. Vehicles: smog impact fee: refunds.

Existing law imposes a smog impact fee of \$300 on a person making application to register a motor vehicle in this state that was previously registered outside this state, with certain exceptions. However, in the case of *Jordan v. D.M.V.* (1999) 75 Cal.App.4th 449, the court ruled that the imposition of this fee is unconstitutional.

This bill would repeal the provisions imposing the smog impact fee and would make a related change.

The bill would transfer \$665,261,000 from the General Fund to the Smog Impact Fee Refund Account in the State Transportation Fund, which would be created by this bill as a continuously appropriated account in the Special Deposit Fund, for the purpose of funding refunds of the smog impact fee and for certain other purposes. By so establishing this account, this bill would make an appropriation.

The bill would become operative only if AB 809 is enacted and becomes operative, as specified.

The bill would declare that it is to become effective immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Chapter 3.3 (commencing with Section 6261) of Part 1 of Division 2 of the Revenue and Taxation Code imposes a three hundred dollar (\$300) smog impact fee on used motor vehicles that were last registered outside of this state and are not certified to meet the state's vehicle emission control requirements. The fee is due upon the initial registration of the vehicle in this state.

(b) The smog impact fee has been collected by the Department of Motor Vehicles on behalf of the state since October 1990, during which time approximately 1,700,000 vehicle owners have paid the fee

resulting in a total amount of approximately five hundred million dollars (\$500,000,000).

(c) Lawsuits challenging the imposition of the smog impact fee were the subject in the case of *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449, in which the court ruled that imposition of the smog impact fee is unconstitutional and ordered the state to refund the fees to the plaintiffs.

(d) The Governor, in November 1999, announced that the state would not appeal the decision of the court in the case cited under subdivision (c) and that the state would refund the smog impact fee, plus interest, to all persons who have paid the fee. The Governor also instructed the Department of Motor Vehicles to stop collecting the fee and made provision in the proposed 2000–01 Budget Act for legislation appropriating funds to pay the smog impact fee refunds with interest.

(e) The Legislature, through enactment of this act and its companion measure, Assembly Bill 809, intends to do all of the following:

(1) Repeal existing provisions of law that establish and impose the smog impact fee.

(2) Require the Department of Motor Vehicles to search its records and promptly identify those persons who were, at the time the application for registration was completed, the registered owner or lessee of the vehicle and who are eligible for a refund of the smog impact fee.

(3) Notify all eligible recipients of the pending refunds and provide a simplified verification and claims procedure for those refunds.

(4) Promptly provide payment of the smog impact fee refunds to eligible persons, including the three hundred dollar (\$300) fee, any penalty fee collected for late payment of the smog impact fee, and interest earned on those charges.

(5) Appropriate the full amount of funds necessary to refund the smog impact fee, any penalty fee collected for late payment of the smog impact fee, and any interest due to those who paid the fee.

SEC. 2. Section 6261 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 6262 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 6263 of the Revenue and Taxation Code is amended to read:

6263. No person, other than the manufacturer who has received authorization to sell the motor vehicle in California or a person authorized by the manufacturer, shall install a vehicle emission control label on any motor vehicle. No person shall remove, alter, deface, obscure, or destroy a vehicle emission control label or any label required to be affixed to any motor vehicle certified pursuant



to the National Emissions Standards Act (42 U.S.C. Sec. 7521 et seq., and Subpart A (commencing with Sec. 86.078-3) of Part 86 of Title 40 of the Code of Federal Regulations). Any person who violates any provision of this section is guilty of a misdemeanor and is subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than one year, or both that fine and imprisonment.

SEC. 5. Section 6909 is added to the Revenue and Taxation Code, to read:

6909. (a) The Controller shall transfer the amount of six hundred sixty-five million two hundred sixty-one thousand dollars (\$665,261,000) from the General Fund to the Smog Impact Fee Refund Account, which is hereby created in the Special Deposit Fund.

(b) Notwithstanding Section 13340 of the Government Code, the moneys in the Smog Impact Fee Refund Account in the Special Deposit Fund are hereby continuously appropriated, without regard to fiscal years, to the Department of Motor Vehicles for the purpose of making refunds to persons who paid the smog impact fee formerly required by Chapter 3.3 (commencing with Section 6261) upon registering a vehicle in California. Each refund shall also include the amount of any penalties incurred by the payer with respect to the fee, and shall also include interest as specified in Sections 1673.2 and 1673.4 of the Vehicle Code. In addition, the appropriate level of court costs, fees, and expenses in the settlement of the case of *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449, shall be determined through binding arbitration, and all of those fees, costs, or expenses shall be paid with funds from the account.

(c) The amount of any refund made under Section 1673.2 or Section 1673.4 of the Vehicle Code that is returned to the Department of Motor Vehicles because the recipient's mailing address as shown by the records of the department is incorrect shall be retained in the Smog Impact Fee Refund Account in the Special Deposit Fund until either of the following occurs:

(1) The department is able to ascertain the correct address of the recipient, at which time the refund shall be mailed to that address.

(2) The date upon which those funds are transferred from the Smog Impact Fee Refund Account in the Special Deposit Fund back to the General Fund.

(d) Any unencumbered balance remaining in the account on or after June 30, 2004, shall revert to the General Fund.

(e) The Legislature hereby finds and declares that the amount appropriated under subdivision (b) is a refund of taxes, as described in subdivision (a) of Section 8 of Article XIII of the Constitution, and, as a result, is not included within the "appropriations subject to limitation" of the state, as defined in that subdivision (a).



SEC. 6. (a) The Legislature hereby finds and declares that a portion of the revenue generated by imposition of the smog impact fee was deposited in the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund.

(b) Accordingly, it is the intent of the Legislature that any unused funds remaining in that account, after the Legislature has determined that all goals and objectives of the programs funded from that account have been achieved, be transferred to the General Fund.

SEC. 7. This act shall become operative only if Assembly Bill 809 of the 1999–2000 Regular Session is enacted and becomes operative and provides for a program to make refunds of the smog impact fee enacted under Chapter 3.3 (commencing with Section 6261) of Part 1 of Division 2 of the Revenue and Taxation Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide, at the earliest possible time, a refund to the public of the smog impact fee, it is necessary that this act take effect immediately.

